

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 1, 2013

## SENATE BILL

**No. 760**

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### Introduced by Senator Wright

February 22, 2013

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An act to add Section 40709.8 to the Health and Safety Code, relating to nonvehicular air pollution.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 760, as amended, Wright. Electrical generation facility: emission reduction credits.

Existing law requires every air pollution control and air quality management district board to establish a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants to be banked prior to use to offset future increases in emissions. Existing law designates the State Air Resources Board as the responsible agency for the preparation of the state implementation plan required by the federal Clean Air Act.

This bill would prohibit every air pollution control and air quality management district that has established an emission reduction credit program, as specified, from imposing any conditions to physically destroy existing equipment that may be ~~currently operating, operating or not operating, or that is or will be~~ retired at an electrical generation facility ~~that applies for an emission reduction credit unless the owner or operator retires that equipment to provide emission reduction credits, emission offsets, or an offset exemption from the district or the new~~

*source review program of the federal Clean Air Act otherwise requires.* By imposing new duties on air pollution control and air quality management districts, this bill would impose a state-mandated local program. ~~The bill would authorize the repowering of previously retired electrical generation facility equipment that generated emission reduction credits from the shutdown of the equipment if the Governor declares a state of emergency due to a sudden and severe energy shortage and the energy shortage can only be alleviated by the repowering of the equipment. The bill would authorize an air pollution control district or air quality management district to seek civil penalties under the federal Clean Air Act, if the repowering of the previously retired electrical generation facility results in a violation of the federal act.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 40709.8 is added to the Health and Safety  
2 Code, to read:  
3 40709.8. ~~(a) Notwithstanding any other law, a~~ A district that  
4 has established a system pursuant to Section 40709 by which  
5 reductions in emissions may be banked or otherwise credited to  
6 offset future increases in the emissions of air contaminants, or  
7 ~~which that~~ utilizes a calculation method that enables internal  
8 emissions reductions to be credited against increases in emissions,  
9 shall not impose any conditions to physically destroy existing  
10 equipment that may be currently ~~operating~~, *operating or not*  
11 ~~operating, or operating that is or will be retired at an electrical~~  
12 ~~generation facility that applies for an emission reduction credit.~~  
13 *unless either of the following applies:*  
14 *(a) The owner or operator retires that equipment to provide*  
15 *emission reduction credits, emission offsets, or an offset exemption*  
16 *from the district.*

1     (b) *The new source review program of the federal Clean Air*  
2 *Act (42 U.S.C. Sec. 7401 et seq.) requires the imposition of such*  
3 *a condition.*

4     ~~(b) Except as provided in subdivision (c), equipment at an~~  
5 ~~electrical generation facility permanently shutdown or retired as~~  
6 ~~a condition of generating emission reduction credits shall not be~~  
7 ~~operated or used in any way that releases air emissions.~~

8     ~~(c) Notwithstanding subdivision (b), the repowering of~~  
9 ~~previously retired electrical generation facility equipment that~~  
10 ~~generated emission reduction credits from the shutdown of that~~  
11 ~~equipment shall be authorized if both of the following conditions~~  
12 ~~are met:~~

13     ~~(1) The Governor, pursuant to California Emergency Services~~  
14 ~~Act (Chapter 7 (commencing with Section 8550) of Division 1 of~~  
15 ~~Title 2 of the Government Code) has declared a state of emergency~~  
16 ~~due to a sudden and severe energy shortage, within the meaning~~  
17 ~~of Section 8558 of the Government Code.~~

18     ~~(2) The Governor declares that the energy shortage can only be~~  
19 ~~alleviated by the repowering of the equipment.~~

20     ~~(d) Notwithstanding subdivision (a), a district may require an~~  
21 ~~electrical generation facility to make changes to its existing~~  
22 ~~equipment, as is necessary, to ensure that emissions reductions~~  
23 ~~used to create the emission reduction credit are permanent. The~~  
24 ~~district shall submit to the United States Environmental Protection~~  
25 ~~Agency for approval a protocol specifying the types of changes~~  
26 ~~the district may require and the district may only require those~~  
27 ~~changes that are consistent with the approved protocol.~~

28     ~~(e) Notwithstanding the California Emergency Services Act,~~  
29 ~~during any period of operation authorized pursuant to subdivision~~  
30 ~~(c) that constitutes a violation of the federal Clean Air Act (42~~  
31 ~~U.S.C. Sec. 7401 et seq.), the district may seek civil penalties~~  
32 ~~against the electrical generation facility pursuant to Section 7420~~  
33 ~~of Title 42 of the United States Code. Penalties collected shall,~~  
34 ~~upon appropriation by the Legislature, be expended by the district~~  
35 ~~on emission reduction projects and to reimburse the district for its~~  
36 ~~costs of enforcement.~~

37     SEC. 2. If the Commission on State Mandates determines that  
38 this act contains costs mandated by the state, reimbursement to  
39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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